

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

UNIVERSITAS EDUCATION, LLC,

Petitioner/Judgment Creditor,

v.

Case No. 14-FJ-5-HE

NOVA GROUP, INC.,

Respondent/Judgment Debtor

AVON CAPITAL, LLC,

Respondent/Judgment Debtor,

ASSET SERVICING GROUP, LLC

Respondent/Garnishee,

SDM HOLDINGS, LLC

Respondent/Garnishee

and

AVON CAPITAL, LLC, a Wyoming
Limited Liability Company,

Intervenor.

**INTERVENOR AVON CAPITAL, LLC'S
OBJECTIONS TO FOURTH APPLICATION FOR ORDER
APPROVING DISTRIBUTION OF SDM HOLDINGS, LLC TO
ITS SOLE MEMBER AVON CAPITAL, LLC IN RECEIVERSHIP**

Intervenor Avon Capital, LLC, a Wyoming limited liability company ("Avon Capital-WY"), objects to Receiver Ryan Leonard's Fourth Application for Order approving Distribution of SDM Holdings, LLC to Its Sole Member Avon Capital, LLC In

Receivership (Doc. 422). In support of these objections, Avon Capital-WY states as follows:

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Avon Capital-WY incorporates the factual background and procedural history set forth in its objections to payment of the Receiver's fees and costs for March, April, May, June, and July 2022 and Petitioner Universitas Education, LLC's application for order permitting payment of certain debts (*See* Docs. 333 and 346), its objections to the Receiver's Second Application for Order Approving Distribution of SDM Holdings to its Sole Member Avon Capital, LLC in Receivership (*See* Doc. 377), and its objections to the Receiver's Third Application for Order Approving Distribution of SDM Holdings, LLC to Its Sole Member Avon Capital, LLC In Receivership (*See* Doc. 399).¹

II. ARGUMENTS AND AUTHORITIES

Avon Capital-WY has appealed the Court's finding of *alter ego* liability. (*See* Doc. Nos. 315 and 316). Avon Capital-WY has also appealed the Court's appointment of a Receiver, which the Tenth Circuit subsequently consolidated with Avon Capital-WY's appeal of the finding *alter ego* liability.² (Doc. 320).

¹ On May 23, 2022, the Court granted the Receiver's Third Application for Order Approving Distribution of SDM Holdings to its Sole Member Avon Capital, LLC in Receivership. (*See* Doc. 394).

² Universitas filed its Appellee's brief on February 4, 2022. Avon Capital-WY and SDM Holdings, LLC filed their respective Appellant reply briefs on March 14, 2022. The Tenth Circuit heard oral argument on September 27, 2022. The appeal remains pending.

Consistent with Avon Capital-WY's appeal pending before the Tenth Circuit, for the purposes of the record and to avoid waiver, Avon Capital-WY maintains its objection to the appointment of the Receiver and all motions that follow as a consequence of that appointment, including but not limited to payment of fees and expenses incurred by the Receiver and distributions necessary to pay for those fees and expenses. Accordingly, as it concerns the identified Motion, Avon Capital-WY objects to the Receiver's requested distribution of \$10,275.00 for payment of expenses and fees for March, April, May, June, and July 2022. (*See* Doc. 422).³

Prior to appointing the Receiver, the Court enjoined Avon Capital-WY from disposing of assets/membership interest in SDM Holdings and enjoined SDM Holdings from disposing or otherwise transferring assets. (Doc. 228). These injunctions have been an effective means to maintain the status quo. They have also accomplished the Court's stated purpose of the Receivership, which is to preserve Avon Capital-WY's membership interest in SDM Holdings, and ultimately, to preserve the value of the portfolio held by SDM Holdings. Furthermore, historically, even before the injunctions, SDM Holdings has not made regular distributions to Avon Capital-WY.

Were the Court to approve the identified Motion pending before this Court on the distribution of expenses and fees for March, April, May, June, and July 2022 (Doc. 422), and the Tenth Circuit does not affirm the Court's finding of *alter ego* liability or the appointment of the Receiver, then Avon Capital-WY will be unduly burdened and

³ The Receiver cited to no authority in support of the proposition that payment of attorney's fees constitutes permissible costs and expenses of a receivership. (*See* Doc. 422).

prejudiced by the distribution of any assets out of SDM Holdings to compensate the Receiver.

III. CONCLUSION

For the purposes of the record, Avon Capital-WY maintains its objection to the appointment of the Receiver, which is on appeal, and all motions that flow from that appointment, including: Receiver Ryan Leonard's Fourth Application for Order approving Distribution of SDM Holdings, LLC to Its Sole Member Avon Capital, LLC In Receivership. (Doc. 422). Avon Capital-WY also prays that this Court not issue a determination on Receiver Ryan Leonard's Fourth Application for Order approving Distribution of SDM Holdings, LLC to Its Sole Member Avon Capital, LLC In Receivership (Doc. 422) until the Tenth Circuit has resolved the consolidated appeals. (*See* Doc. 320).

/s/ Alan L. Rupe

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CERTIFICATE OF SERVICE

I certify that on November 3, 2022, I electronically filed the above using the CM/ECF System. Based on the records on file, the Clerk of Court will transmit a Notice of Electronic Filing to the counsel of record.

/s/ Alan L. Rupe

Alan L. Rupe